

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6601

DATE COMPLAINT FILED: 7/3/2012

DATES OF NOTIFICATION: 7/11/2012
6/19/2013¹

LAST RESPONSE RECEIVED: 6/21/2013

DATE ACTIVATED: 9/25/2012

ELECTION CYCLE: 2012

EXPIRATION OF SOL: 6/25/2017 to 8/22/2017

COMPLAINANT:

James Miller²

RESPONDENTS:

Steve Oelrich

Steve Oelrich Campaign and Jacqueline Schall in
her official capacity as treasurer

Steve Oelrich for Congress and Jacqueline Schall in
her official capacity as treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 434(f)

2 U.S.C. § 441b(a)

2 U.S.C. § 441d

2 U.S.C. § 441i(e)

11 C.F.R. § 100.29

11 C.F.R. § 110.3(d)

11 C.F.R. § 110.11

11 C.F.R. § 114.2

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

Florida State Disclosure Reports

¹ Due to an administrative oversight, this Office notified Steve Oelrich on June 19, 2013.

² Complainant purports to submit the Complaint on behalf of then-Congressman Cliff Stearns, one of Oelrich's opponents in the 2012 Republican primary election in the Third District of Florida, but does not elaborate on his relationship with Stearns or Stearns's campaign. Publicly available information indicates that Complainant is the principal of Battleground Group Inc., a vendor to Stearns's campaign. See, e.g., Friends of Cliff Stearns, 2012 July Quarterly Report at 53-54 (July 13, 2012).

I. INTRODUCTION

Steve Oelrich was a Florida State Senator and a Congressional candidate in the 2012 election cycle. The Complaint in this matter alleges that Oelrich, his federal authorized committee, Steve Oelrich for Congress (the "Federal Committee"), and his state committee, the Steve Oelrich Campaign (the "State Committee"), violated the Federal Election Campaign Act of 1971, as amended, (the "Act") in connection with a radio advertisement paid for and disseminated by the State Committee. In the advertisement, Oelrich thanked his constituents that he served as Sheriff and then as State Senator and addressed his state legislative accomplishments. The Complaint alleges that the advertisement violates the Act because it lacked any disclaimer. The Complaint also alleges that because the ad was paid for by the State Committee, which accepted corporate contributions, Respondents violated the Act's ban on corporate contributions.

Oelrich and the Federal Committee responded that the radio advertisement in question only referenced state-level matters that Oelrich had been involved with and was directed only to persons in his State Senate geographical area.³ Resp. at 1 (Aug. 28, 2012). Oelrich and the Federal Committee also state that there were no references to a federal candidacy or election and assert that the radio ad should not be deemed an activity that triggers any federal election requirements. *Id.*

As discussed below, in view of the circumstances of this matter, we recommend that the Commission exercise its prosecutorial discretion to dismiss the allegations in the Complaint and close the file.

³ The Federal Committee filed the Response containing a "Declaration and Verification" by Oelrich. See Resp. at 7. Oelrich later adopted the Response on his own behalf. See Oelrich Resp. (June 21, 2013). The State Committee was notified of the Complaint but did not submit a response.

1 **II. FACTUAL BACKGROUND**

2 Oelrich filed a Statement of Candidacy on February 3, 2012, for the U.S. House of
3 Representatives election in the newly drawn Third Congressional District of Florida, and was a
4 candidate in the Republican primary election on August 14, 2012.⁴ At that time, Oelrich was a
5 sitting Florida State Senator, but did not file for reelection as State Senator by the June 8, 2012,
6 deadline. *See* Resp. at 2-4. Oelrich's State Senate term ended on November 16, 2012.

7 On June 25, 2012, according to Respondents, Oelrich's State Committee began airing a
8 radio advertisement. Resp. at 3. The Complaint did not include the radio advertisement script.
9 The Federal Committee's Response asserts that the advertisement stated:

10 This is Steve Oelrich. I want to **thank** the citizens of North Central
11 Florida for allowing me to serve and represent you – first as Sheriff and
12 then as your State Senator.

13
14 **Thank you** for those who supported us in our challenge to successfully
15 balance the state budget every year.

16
17 Our state's education system, including the University of Florida, should
18 not have to suffer financially in order to pay for earmarks or un-necessary
19 pet projects.

20
21 **Thanks** for offering your prayers as we fought to curb late term abortions
22 and prevent the state from spending tax dollars to fund abortions.

23
24 We passed a new law mandating drug testing for welfare recipients. And
25 we moved legislation protecting your right to bear arms in the State of
26 Florida against intrusive federal gun regulations.

27
28 We also passed legislation helping organ donors and those who receive the
29 gift of life.

30
31 I'm State Senator Steve Oelrich. My family and I **thank you** for placing
32 your trust in me. God Bless you, your family, the great state of Florida
33 and the United States of America.

⁴ Oelrich originally filed a Statement of Candidacy on January 19, 2012, for the Sixth Congressional District of Florida. He filed an amended statement on February 3, 2012, designating the election in the Third Congressional District. Oelrich lost the primary election, coming in third with 19% of the vote.

Resp. at 3 n.4 [emphasis in original].

The Federal Committee asserts that the advertisement ran only on stations geographically focused on Oelrich's State Senate district, and not on the entire Third Congressional District.⁵

Id. at 4. The available information does not indicate how long the advertisement aired, although the Response states that under Florida law, Oelrich was permitted to use state campaign funds to air "thank you" advertising until August 22, 2012, 75 days after withdrawing as a state candidate on June 8, 2012.⁶ *Id.* at 3.

As detailed in the chart below, the State Committee's disclosure reports indicate that it spent \$37,350 on the radio advertisement.⁷

Payment	Date	Purpose	Payee
\$27,000.00	6/22/2012	Thank You Advertising	Let's Get to Work Productions
\$ 6,300.00	6/25/2012	Thank You Advertising	Let's Get to Work Productions
\$ 1,800.00	7/20/2012	Thank You Advertising	Let's Get to Work Productions
\$ 2,250.00	8/10/2012	Thank You Advertising	Let's Get to Work Productions

Between 2011 and 2012, the State Committee accepted 45 contributions totaling \$20,500 from entities explicitly identified as corporations, and over 100 contributions from other entities

⁵ Oelrich stated in a press release that his State Senate district made up "over 63%" of the Congressional District. See Resp. Att. 2; see also *Steve Oelrich Running for Congress, 3rd District*, CHIEFLAND CITIZEN, June 21, 2012, <http://www.chieflandcitizen.com/content/steve-oelrich-running-congress-3rd-district>.

⁶ The Response cites a Florida statute specifically authorizing a candidate who withdraws his or her candidacy or is eliminated as a candidate to expend funds remaining in his or her state campaign account to "[p]urchase 'thank you' advertising for up to 75 days after he or she withdraws, becomes unopposed, or is eliminated or elected." Fla. Stat. Title IX, § 106.11(5)(a). The Response states that Oelrich withdrew as a candidate for reelection to state office on June 8, 2012, by virtue of not filing "qualification papers" with the state. Resp. at 2-3.

⁷ See Resp. Attach. 6 (State Committee disclosure report covering April 1 through August 9, 2012) and a later version of the disclosure report covering through August 16, 2012, available on the Florida Secretary of State website and in the Commission's Voting Ballot Matters folder.

The State Committee disclosed additional disbursements totaling \$910.47 that were made between July 2 and August 11 for costs relating to written "thank you advertising" (e.g., envelopes, labels, and postage). We do not have a copy of the written communication or any description of it. Consequently, we do not know whether the text of the written communication is similar to Oelrich's radio advertisement.

1 totaling over \$47,000, some of which may constitute corporate funds, out of a total of 380
2 contributions received totaling \$149,707.⁸ See the Oelrich State Contributions list in the
3 Commission's Voting Ballot Matters folder. According to the Response, the State Committee
4 had \$43,000 cash-on-hand as of June 8, when Oelrich ceased to be a state candidate. Resp. at 2.

5 The Complaint alleges that Oelrich's advertisement lacked a required disclaimer in
6 violation of the Act. Compl. at 2. Respondents assert that no federal disclaimer was required
7 because the advertisement was not paid for by a federal political committee, did not contain
8 express advocacy, and was exempt from the definition of "electioneering communication."
9 Resp. at 6. Respondents also assert that the State Committee contacted the Florida Division of
10 Elections prior to running the advertisement and was advised that no disclaimer was required.
11 Resp. at 4 n.4. According to the Response, after the Complaint noted the lack of a disclaimer
12 "and similar questions arose from the radio station perspective," the State Committee added the
13 following disclaimer to the advertisement: "Political advertisement paid for and approved by
14 Steve Oelrich, Republican, State Senate, District 7." *Id.*

15 The Complaint also alleges that the payment for the advertisement resulted in a
16 prohibited corporate contribution to the Federal Committee because it was paid for by the State
17 Committee, which accepted corporate funds. Compl. at 3. Respondents assert that the radio
18 advertisement does not implicate the Act's corporate contribution prohibitions at 2 U.S.C.
19 §§ 441b, 441i(e), and 441i(f) because it (1) only referenced state matters; (2) was broadcast only
20 to individuals in Oelrich's State Senate geographical area; (3) did not contain any references to
21 his federal candidacy or election; and (4) was specifically authorized by the Florida election

⁸ Florida permits corporate contributions to state candidates. See generally FLA. STAT. Ch. 106 (2012); see <http://election.dos.state.fl.us/campaign-finance/cam-finance-reporting.shtml>.

1 statutes. As such, the Committee argues that Oelrich's radio advertisement did not have a
2 connection with a federal election. Resp. at 4-6.

3 **III. LEGAL ANALYSIS**

4 **A. Disclaimer and Electioneering Communication Disclosure**

5 The Act and Commission regulations require a disclaimer on the following
6 communications: (1) all public communications by electronic mail of more than 500
7 substantially similar communications by and internet websites of a political committee; (2) all
8 public communications, by any person, expressly advocating the election or defeat of a clearly
9 identified candidate; (3) all public communications, by any person, that solicit any contribution;
10 and (4) all electioneering communications, by any person. 2 U.S.C. § 441d(a); 11 C.F.R.
11 § 110.11(a); *see also* 11 C.F.R. § 100.22 (defining "expressly advocating"); *id.* § 100.26
12 (defining "public communication").

13 Oelrich's radio advertisement was not paid for by a federal political committee, did not
14 contain express advocacy, and did not solicit any contributions. Thus, the communication is
15 within the scope of the disclaimer requirements only if it was an "electioneering
16 communication." *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). An "electioneering
17 communication" is any broadcast, cable, or satellite communication that refers to a clearly
18 identified candidate for federal office, is publicly distributed within 60 days of the general
19 election or within 30 days of the primary election, and, for House and Senate candidates, is
20 targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A); 11 C.F.R. § 100.29(a).

21 The advertisement was a broadcast communication that refers to Oelrich, a clearly
22 identified federal candidate. *See* 2 U.S.C. § 431(18); 11 C.F.R. § 100.17. The ad aired
23 beginning on June 25, 2012, *see* Resp. at 3, and may have aired during the 30-day electioneering

1 communication window that began on July 14, 2012, before the August 14, 2012, primary
2 election. *See* 2 U.S.C. § 434(f)(3). The available information does not indicate an end date for
3 the ad, but it appears likely that the ad aired during the 30-day window, in view of two factors:
4 (1) the State Committee made its fourth and final payment for the ad on August 10, 2012; and
5 (2) Respondents stated that under Florida law Oelrich had until August 22 to run the ad and that
6 the ad ran only within the permitted time frame. *See id.* & Att. 6 at 5. And the advertisement
7 appears to have been targeted to the relevant electorate, as all five stations on which the ad was
8 aired broadcast into the Third Congressional District. *See* Resp. at 4 n.5 (listing five radio
9 stations on which the advertisement aired).

10 Nonetheless, the Act and the Commission's regulations exempt from the definition of
11 "electioneering communication" any communication that is paid for by a candidate for state or
12 local office in connection with an election to state or local office, provided that the
13 communication does not promote, support, attack or oppose any federal candidate. 11 C.F.R.
14 § 100.29(c)(5); *see also* 2 U.S.C. § 434(f)(3)(B)(iv). The Response asserts that this exemption
15 applies. Resp. at 6 n.8. Oelrich, however, was not a candidate for state or local office when the
16 advertisement aired.⁹ *See* Resp. at 2-3 (Oelrich withdrew as a candidate for reelection to state
17 office on June 8, 2012, by virtue of not filing "qualification papers" with the State of Florida).
18 Thus, the exemption for state or local candidates does not apply to Oelrich's radio advertisement.
19 Accordingly, Oelrich's advertisement may be an electioneering communication, to which the

⁹ Oelrich was a state officeholder at the time of the radio advertisements, but the Act and Commission regulations distinguish between applicability to state or local candidates and state or local officeholders. *See, e.g.,* 2 U.S.C. § 441i(f); 11 C.F.R. § 300.70 (applies to a candidate for state or local office and an individual holding state or local office). As to section 100.29(c)(5) itself, the Commission proposed an exemption that would cover communications by state and local candidates and officeholders, but the final rule was limited to state and local candidates. *See* Final Rules and Explanation and Justification for Electioneering Communications, 67 Fed. Reg. 65,190, 65,198-99 (Oct. 23, 2002).

1 disclaimer requirement applies. *See* 2 U.S.C. §§ 434(f)(3)(A)(i), 441d(a). A disclaimer would
2 have stated who paid for the communication and whether the advertisement was authorized by a
3 candidate or candidate's authorized committee, that is, the Federal Committee. *See* 2 U.S.C.
4 § 441d(a)(1)-(3); 11 C.F.R. § 110.11(b)(1)-(3). Even after Respondents added a disclaimer, *see*
5 Resp. at 4 n.4 ("Political advertisement paid for and approved by Steve Oelrich, Republican,
6 State Senate, District 7"), possibly by the start of the 30-day electioneering communication
7 period on July 14, 2012, the disclaimer did not identify Oelrich as a federal candidate. *See*
8 11 C.F.R. § 110.11(c)(3)(iv) (examples of acceptable statements that satisfy the spoken statement
9 requirements for radio ads include "I am [insert name of candidate], a candidate for [insert
10 Federal office sought], and I approved this advertisement," and "My name is [insert name of
11 candidate]. I am running for [insert Federal office sought], and I approved this message.").

12 Oelrich's radio advertisement may also have been subject to disclosure as an
13 electioneering communication. The Act and Commission regulations require that every person
14 who makes aggregate disbursements exceeding \$10,000 for the cost of producing and airing
15 electioneering communications during any calendar year must, within 24 hours of each
16 disclosure date, disclose information regarding the communication. 2 U.S.C. § 434(f)(1);
17 11 C.F.R. § 104.20(b). "Disclosure date" is defined as the first date on which an electioneering
18 communication is publicly distributed, provided that the person making the electioneering
19 communication has made one or more disbursements, or has executed contracts to make one or
20 more disbursements, for the costs of the communication aggregating in excess of \$10,000.
21 11 C.F.R. § 104.20(a)(1). The State Committee spent \$37,350 on the Oelrich advertisement that
22 began to air on June 25, 2012, according to Respondents. If the State Committee spent more
23 than \$10,000 on the ad during the electioneering communications window — the 30-day period

1 before the August 14, 2012, primary election — the State Committee was required to file 24-
2 hour electioneering communication reports. *See* 2 U.S.C. § 434(f). The State Committee did not
3 file any such reports.

4 Although Oelrich's radio advertisement may be an undisclosed electioneering
5 communication with an inadequate federal disclaimer, we recommend that the Commission
6 dismiss the allegations that Respondents violated 2 U.S.C. §§ 434(f) and 441d in connection with
7 the advertisement. First, the advertisement reportedly aired within Oelrich's State Senate
8 district, and began to air on June 25, 2012, prior to the start of the electioneering communication
9 period on July 14, 2012, and thus a corresponding portion of the disclosed \$37,350 cost of the ad
10 does not constitute an electioneering communication. Second, to the extent that the ad did not
11 contain a disclaimer during a portion of the electioneering communication period, the public was
12 unlikely to have been misled as to whether Oelrich approved the message because the ad
13 consisted of Oelrich speaking. And although the disclaimer that was added did not fully comply
14 with FECA requirements for electioneering communications, it identified Oelrich as paying for
15 and approving the ad. For these reasons, we recommend that the Commission dismiss these
16 allegations. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

17 **B. Use of Nonfederal Funds**

18 The Complaint also alleges that the Federal Committee violated the prohibition on
19 corporate contributions because the Oelrich advertisement was paid for by the State Committee,
20 which was permitted to accept corporate contributions. Compl. at 3; *see* 2 U.S.C. § 441b(a);
21 11 C.F.R. § 114.2. The Act restricts certain uses of nonfederal funds,¹⁰ including corporate

¹⁰ Federal funds, by contrast, are defined as "funds that comply with the limitations, prohibitions, and reporting requirements of the Act." 11 C.F.R. § 300.2(g).

1 funds, by federal candidates. *See* 2 U.S.C. § 441i(e). Specifically, the Act prohibits federal
2 candidates, their agents, and entities directly or indirectly established, financed, maintained, or
3 controlled by federal candidates from soliciting, receiving, directing, transferring, or spending
4 funds in connection with an election for federal office, including funds for any federal election
5 activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements
6 of the Act.¹¹ 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. The Act identifies “federal election
7 activity” (“FEA”) to include public communications that refer to a clearly identified candidate
8 for federal office and that promote, attack, support or oppose (“PASO”) a candidate for that
9 office, regardless of whether the communication expressly advocates a vote for or against a
10 candidate. 2 U.S.C. § 431(20)(A)(iii); 11 C.F.R. § 100.24(b)(3). Further, Commission
11 regulations prohibit the transfer of funds or assets from a candidate’s campaign committee for a
12 nonfederal election to his or her principal campaign committee. 11 C.F.R. § 110.3(d).

13 Oelrich was a federal candidate and his State Committee is an entity that he directly
14 established, financed, maintained, or controlled. *See* Advisory Op. 2009-26 (Coulson) at 5;
15 Advisory Op. 2007-01 (McCaskill) at 3. The radio advertisement is a “public communication”
16 that clearly identifies a federal candidate because it identifies Oelrich by name. *See* 2 U.S.C.
17 §§ 431(18), 431(22); 11 C.F.R. §§ 100.17, 100.26; AO 2009-26 (Coulson) at 7. Thus, section
18 441i(e) would prohibit the disbursements made by the State Committee for the Oelrich radio

¹¹ We analyze Respondents’ use of corporate funds to pay for the Oelrich radio advertisement under section 441i(e) because it appears to be the most appropriate provision of the Act on these facts. Although Oelrich, as a state officeholder, was also subject to the section 441i(f) prohibition on using nonfederal funds for federal election activity, section 441i(e) applies to Oelrich as a federal candidate as well as to the State and Federal Committees as entities established, financed, maintained or controlled by him. *See* Advisory Op. 2007-01 (McCaskill) at 5 (“[t]he restrictions in 2 U.S.C. 441i(f) are not applicable in circumstances where the more specific provisions of 2 U.S.C. 441i(e) apply.”). *Compare* MURs 6289/6362 (Denham) (federal candidate who is a state officeholder analyzed under section 441i(e)) *with* MUR 6684 (Gregg) (gubernatorial candidate analyzed under section 441i(f)).

advertisement if the ad is in connection with any Federal election, that is, if the ad constitutes FEA by PASOing Oelrich as a federal candidate.¹² See 2 U.S.C. § 441i(e)(1)(A).

Respondents assert that Oelrich's radio ad does not implicate the Act's corporate contribution prohibitions at 2 U.S.C. §§ 441b, 441i(e), and 441i(f) because it (1) did not make reference to his federal candidacy or federal election; (2) contained "no clear promotion of Sen. Oelrich since the context of the ad clearly was a mere 'thank you' to his State Senate constituents" [emphasis in original]; (3) was aired on radio stations that focus on Oelrich's State Senate geographical area, not the entire congressional district where he was seeking election;¹³ and (4) was specifically authorized by the Florida election statutes.¹⁴ Resp. at 4-6.

In a series of Advisory Opinions that applied the PASO standard, the Commission has determined that the mere identification of an individual who is a federal candidate does not, in

¹² The exception at section 441i(e)(2) does not apply here, where, Oelrich was not a state or local candidate at the time of the advertisement, and there was no nonfederal election at issue.

¹³ Respondents cite MURs 5424 (Foxx) and 5387 (Welch) as precedent for these points, but the matters appear to be distinguishable from the one-time nature and timing of Oelrich's radio advertisement shortly before his federal primary election. Respondents cite MUR 5424 (Foxx) as a matter where the Commission declined to apply the restrictions of 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d). Resp. at 5-6. In that matter, Foxx, a state officeholder and a federal candidate, represented that the newspaper and radio ads at issue, which made no mention of her federal campaign, were similar to previous "constituent service ads" she had aired, and the ads aired during 2003, well before her July 20, 2004 primary election. See First Gen. Counsel's Rpt. at 6-7, MUR 5424. Respondents also cite MUR 5387 (Welch), which involved radio advertisements by Welch, a state officeholder and a federal candidate, solely asking voters to help override a veto of a property tax freeze by the Wisconsin Governor, that aired for one week before the legislative vote attempting to override the veto on August 12, 2003, over a year before Welch's federal primary election on September 14, 2004. See Resp. at 5-6; First Gen. Counsel's Rpt. at 4-5, MURs 5387 and 5446. Welch had previously proposed the property tax freeze, appears to have been actively raising funds for a campaign to fund his reelection to state office up until that time, and only filed a Statement of Candidacy for federal office on July 24, 2003. See *id.* at 3-4. The Commission found no reason to believe that Welch violated 2 U.S.C. § 441i. The timing of Welch's ads as well as the nature of his ads as a continuation of activities previously undertaken distinguish MUR 5387 from the instant matter.

¹⁴ One of Oelrich's primary election opponents, then-Congressman Cliff Stearns, reportedly filed a complaint with Florida election officials alleging that Oelrich's state funds could not be used for the thank-you ads because Oelrich had qualified for another office and that Oelrich's ads did not air within 75 days of being elected, defeated, or withdrawing. See Bill Thompson, *Stearns, Oelrich Trade Complaints*, July 12, 2012, GAINESVILLE.COM, available at <http://www.gainesville.com/article/20120712/articles/120719821>. Oelrich asserts that his airing of the radio ad was authorized under Florida law. See Resp. at 2-3.

1 itself, PASO that candidate. *See* Advisory Ops. 2007-34 (Jackson) (federal candidate
2 endorsement of a nonfederal candidate), 2007-21 (Holt) (federal candidate serving as honorary
3 chairman of nonfederal candidate campaigns), 2006-10 (Echostar) (public service
4 announcements featuring federal candidates soliciting donations for charitable organizations),
5 2003-25 (Weinzapfel) (federal candidate endorsement of a nonfederal candidate).

6 In Advisory Opinion 2009-26 (Coulson), the Commission provided guidance on when a
7 federal candidate's state committee or state office account could pay for a communication. The
8 "health care legislative update" letter at issue, sent to 4,000 health care professionals residing in
9 Coulson's state legislative district, described Illinois legislative developments.¹⁵ AO 2009-26
10 at 3, 8. The letter did not solicit any donation nor expressly advocate Coulson's election, or the
11 defeat of her opponents. *See id.*, at 8.

12 The Commission stated that the following phrases from the letter could be construed to
13 PASO Coulson: (1) "I have remained committed to making progress for the residents of this
14 State," and (2) "I will continue to look for innovative ideas to help improve the healthcare

¹⁵ In relevant part the letter states:

As both your State Representative and a colleague in the health care field, I have made every effort to ensure that Illinois offers a climate where doctors can thrive. As many of you know, our state is facing immense challenges to survive, recover and grow in today's daunting economic conditions. Despite the volatile climate that has plagued Springfield during this past legislative session, I have remained committed to making progress for the residents of this State. To bring necessary improvements and resources to the medical industry, I am proud to have supported several initiatives, all Illinois State Medical Society priorities, which have passed both chambers and await action by the Governor.

The letter then lists and describes health care legislative proposals being considered by the Illinois legislature. It also describes a State health care bill that Representative Coulson co-sponsored and explains why she supports the bill. The letter further states:

I will continue to look for innovative ideas to help improve the health care system in Illinois, as well as help improve the lives of those who need our care. As always, I welcome your ideas and input as many of my best proposals originate from constituents in the 17th district.

The letter is signed "Beth Coulson[,] State Representative." AO 2009-26 at 3-4.

1 system in Illinois, as well as help improve the lives of those who need our care.” *Id.* However,
2 the Commission ultimately determined that the letter did not PASO Coulson because the phrases
3 were used to “address Coulson’s past and ongoing legislative actions as a State officeholder.”
4 *See id.* The Commission also noted that the letter would not be sent outside Coulson’s state
5 district, was sent only to health care professionals located in the district, that Coulson sent the
6 letter the previous year and its scope and frequency would not be altered, and that the letter “is
7 consistent with the types of mailers state representatives typically send to their constituents as
8 one of their responsibilities as State officeholders.” *Id.* at 9. The Commission further noted that
9 it had recognized that a state officeholder’s declaration of federal candidacy does not
10 automatically alter the character of the candidate’s activities routinely engaged in as a state
11 officeholder, and that Coulson was “merely continuing activities she had previously undertaken
12 as a State officeholder prior to her Federal candidacy.” *Id.*

13 Here, Oelrich’s radio advertisement was not “merely continuing activities” that he had
14 “previously undertaken as a State officeholder prior to [his] Federal candidacy.” To the contrary,
15 this was a one-time advertisement that was entirely created and aired after Oelrich had declared
16 that he would be ending his tenure as a State officeholder, and had already declared himself a
17 federal candidate. Further, while Oelrich lists an array of his own legislative accomplishments
18 (such as balancing the state budget every year, “pass[ing] a new law mandating drug testing for
19 welfare recipients,” and “pass[ing] legislation helping organ donors,” “f[ighting] to curb late
20 term abortions” and “mov[ing] legislation protecting your right to bear arms in the State of
21 Florida against intrusive federal gun regulations.”), these accomplishments are presented in
22 retrospective fashion and thus they have no connection to any ongoing legislative actions, as was
23 the case in Coulson. Finally, Oelrich’s ad was not targeted to a particular group that might be

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1 interested in his specialized message – this advertisement was broadcast to everyone in his State
2 Senate district, an area that reportedly included approximately 63% of the federal Congressional
3 district where Oelrich was a candidate. *See supra* note 5. Thus, in this matter we seem to lack
4 many of the factors that caused the Commission to conclude that Coulson's letter did not PASO
5 her federal candidacy, making this matter a closer call.

6 Further, aspects of Oelrich's advertisement seem to be designed to support and promote
7 him as a federal candidate. For instance, although the purported purpose of the advertisement is
8 to thank the State Senate district constituents he had served for the past six years, he also refers
9 to his tenure as Sheriff, an office he held from 1992 to 2006. In doing so, Oelrich presents
10 himself to listeners as an individual with 20 years of experience serving the public as an elected
11 official, a fact that would demonstrate that he has the qualifications and character to serve the
12 public interest as a Congressman, which served to promote Oelrich as a federal candidate.

13 Further, Oelrich's radio advertisement aired in close proximity to his federal election. And
14 Oelrich's ad was in closer proximity to his election — starting 50 days before the election —
15 than was Coulson's letter to her election: she was to mail her legislative update sometime after
16 November 4, 2009, but apparently well before her February 2, 2010, primary election. *See* AO
17 2009-26 at 3 n.3; Advisory Op. Req. at 1, AO 2009-26. Indeed, the State Committee's final
18 payment for the Oelrich ad was August 10, 2012, just four days before the election.¹⁶ Finally,

¹⁶ That activity in close proximity to an election is likely to be in connection with that election has been recognized by Congress and the Commission in a variety of contexts under the Act. *See, e.g.*, 11 C.F.R. § 100.22(b) ("proximity to the election" listed as an external event that may be considered in determining whether a communication is "expressly advocating" the election or defeat of a candidate), 11 C.F.R. §§ 100.72(b)(4) and 100.131(b)(4) (conducting activity in "close proximity to the election" listed as an activity indicating an individual has decided to become a candidate and gone beyond "testing the waters"), 2 U.S.C. § 431(20)(A)(i) (voter registration activity within 120 days before an election is federal election activity), 11 C.F.R. § 109.21(c)(4) (coordinated communication content standard requiring a public communication in the clearly identified candidate's jurisdiction within 90 days before an election).

1 the advertisement's discussion of Oelrich's legislative accomplishments regarding issues that are
2 likely to be relevant to the voters in the federal Congressional race necessarily promote him.

3 If the advertisement PASO'd Oelrich, under section 441i(e) only funds permissible under
4 the Act may be used to pay for the ad.¹⁷ As noted, the State Committee that paid for the ad
5 accepted a substantial amount of contributions from corporations. *See supra* pages 4-5.¹⁸

6 However, we do not think that Commission needs to reach the question of whether Oelrich's
7 radio advertisement PASO'd him as a federal candidate. Oelrich's ad focuses on his State Senate
8 record and makes no mention of his federal candidacy. In the past, the Commission has
9 dismissed such matters. *See* MUR 6684 (Gregg) (Commission dismissed allegation that state
10 candidate spent federally impermissible funds on a public communication that PASO'd a federal
11 candidate, where even if the communication could be interpreted as opposing the federal
12 candidate under the PASO standard, the communication focused on the state election and did not
13 exhort viewers to vote against the federal candidate). Further, Oelrich asserts that he created and
14 disseminated the advertisement with funds from his state committee pursuant to a Florida state
15 statute specifically authorizing him to purchase "thank you" advertising because he declined to

¹⁷ We note that, whether the advertisement PASO'd Oelrich or not, as an electioneering communication it may be subject to section 441i(e) because it is "in connection with a federal election." In MURs 6289/6362 (Denham), this Office recommended that the Commission find reason to believe respondents violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) where between \$100,000 and \$200,000 of the federal candidate's state committee funds were allegedly spent (by a third party organization) on electioneering communications, but the communications did not PASO the federal candidate. *See* MURs 6289/6362 FGCR at 14-15, 20-23. The Commission split 3-3 on this recommendation. *See* Commission Cert., ¶ 2.d, MURs 6289/6362 (Aug. 4, 2011). We do not reach this issue in the instant matter, however, in view of our recommendation that the Commission dismiss the allegation that Respondents violated section 441i(e).

¹⁸ It does not appear that the costs of the radio ad would constitute an in-kind contribution from the State Committee to the Federal Committee by virtue of being a coordinated communication. Commission regulations set forth a three-prong test to determine whether a payment for a communication is an in-kind contribution as a result of coordination between the person making the payment and the candidate. *See* 11 C.F.R. § 109.21(a)(1)-(3). Consistent with Commission advisory opinions, we conclude that the advertisement here would not meet the payment prong of the coordination test at 11 C.F.R. § 109.21(a)(1). *See* Advisory Ops. 2009-26 (Coulson) at 10 and 2007-01 (McCaskill) at 5.

1 run for re-election. *See supra* note 6. While a state statute does not preempt any applicable
2 provisions of the Act, on balance this fact, together with the other unique circumstances
3 presented in this matter, further supports declining to pursue the matter through additional
4 administrative proceedings.

5 Accordingly, we recommend that the Commission dismiss the allegations that
6 Respondents violated 2 U.S.C. § 441i(e) and close the file in this matter. *See Heckler v. Chaney*,
7 470 U.S. 821 (1985).

8 **IV. RECOMMENDATIONS**

- 9 1. Dismiss the allegation that Steve Oelrich Campaign and Jacqueline Schall in her
10 official capacity as treasurer violated 2 U.S.C. § 441d.
11
12 2. Dismiss the allegation that Steve Oelrich Campaign and Jacqueline Schall in her
13 official capacity as treasurer violated 2 U.S.C. § 434(f).
14
15 3. Dismiss the allegation that Steve Oelrich spent impermissible funds on the radio
16 advertisement in violation of 2 U.S.C. § 441i(e).
17
18 4. Dismiss the allegation that Oelrich for Congress and Jacqueline Schall in her
19 official capacity as treasurer spent impermissible funds on the radio advertisement
20 in violation of 2 U.S.C. § 441i(e).
21
22 5. Dismiss the allegation that Steve Oelrich Campaign and Jacqueline Schall in her
23 official capacity as treasurer spent impermissible funds on the radio advertisement
24 in violation of 2 U.S.C. § 441i(e).
25
26 6. Approve the attached Factual and Legal Analysis.
27
7. Approve the appropriate letters.

8. Close the file.

4-1-13
Date

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